

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2208 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

ANVARBHAI KASAMBHAI

Versus

CHIEF SECURITY COMMISSIONER

Appearance:

MR JS YADAV for Petitioner

MR MJ THAKORE for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 02/05/2000

ORAL JUDGEMENT :

The present petition is filed by the petitioner being aggrieved of an order of removal of the petitioner on the ground of unauthorised absence, which came to be confirmed in appeal also.

2. Short facts giving rise to the present petition are that the petitioner, who was serving as Constable in Railway Protection Force ("RPF" for brevity) at Pratap Nagar, Vadodara was due to resume his duty in the shift of 0000 hours to 0800 hours on 12.2.1991. The petitioner did not resume his duty till the service of the charge sheet which was served on 10.1.1992. It is the case of the department that the petitioner was served with two notices dated 20.6.1991 and 2.8.1991, which were received

by the petitioner on 22.6.1991 and 6.8.1991 respectively, whereby the petitioner was asked to report for duty, but the petitioner did not. Nor did he intimate the cause of his absence. The petitioner was, therefore, charged for leaving headquarters without permission and remaining absent from duty with effect from 12.2.1991 till the date of issuance of charge sheet and the same was treated to be an act of indiscipline and also unbecoming of a member of the Armed Force.

3. The petitioner has challenged the order of removal, which came to be passed after departmental inquiry, which was concluded by the Inquiry Officer by his report dated 12.2.1992, relying on which the impugned order of removal dated 5.3.1992 was passed. Said order was acknowledged by the petitioner on 9.3.1992, against which an appeal was filed and the same came to be dismissed by an order dated 13.4.1993. The petitioner has challenged the order of removal on the ground that the same is passed without taking into consideration the defence of the petitioner. It is the case of the petitioner that the petitioner was not keeping good health from December 1990 and he was facing severe chest pain, cough and fever and he continued to take treatment from Railway Hospital, but could not recover. On 9.2.1991, the petitioner took medicine from the Railway Hospital and he was to report for duty on 12.2.1991, but due to his serious illness, the petitioner could not report for duty and he personally went to inform the Subedar and also gave in writing on 13.2.1991 that he did not come to join duty the previous day because of his serious sickness and that as the petitioner was residing in the city area, he had to visit the nearer private doctor and he took medicine with the help of his brother. It is the case of the petitioner that he did inform in writing that it is not possible for him to join the duty because he was advised complete rest for 12 days by the private doctor. The petitioner has produced a copy of the prescription for treatment from Railway Hospital upto 9.2.1991 and two certificates advising complete rest for a period of about one month.

4. It is the case of the petitioner that as the petitioner was not able to recover his health, he was taken to his native and had taken treatment from TB Hospital situated at Anand as well as from a private doctor, namely, Dr. Kantilal. It is the case of the petitioner that he was sick and that his family members did not permit him to even stand up from the bed and the petitioner was living inside in such a critical situation that he was lying on the bed continuously.

5. It is the case of the petitioner that after taking complete treatment from private hospitals, the petitioner went to resume duty and he first visited the Railway doctor to get medical fitness certificate. On 7.2.1992, the Railway doctor did not certify him as fit and the petitioner was told that he has not recovered completely. Therefore, he was further advised rest for 7 days. On 14.2.1992, again the petitioner was examined by the Railway doctor and he was given medicines. Again on 21.2.1992 and 28.2.1992, the petitioner continued to take treatment from the Railway Hospital. A copy of the certificate issued by the Railway doctor dated 7.2.1992 is produced at Annexure 2. It is submitted by the petitioner that simultaneously the departmental proceedings were also going on wherein the petitioner had requested for documents and the petitioner has produced a copy of letter written by him dated 28.1.1992, which is produced at Annexure 3. It is the case of the petitioner that at the initial stage of the departmental inquiry, the officer of the department advised the petitioner to get certificate of fitness and that the petitioner will be given light duties, but the Railway doctor refused to give fitness certificate because of his ill health and thus, the petitioner was put in difficult situation at both the ends and at last the petitioner came to be served with the removal order.

6. The perusal of the impugned order dated 5.3.1992, which is at Annexure 'F', page 25, reveals that the charge sheet was issued under Rule 153 of the RPF Rules, 1987. The petitioner was charged with remissness/negligence in discharge of his duties as the petitioner left headquarter without permission and the petitioner was absent from duty from 12.2.1991 till the date of issuance of charge sheet dated 10.1.1992. The Inquiry Officer has submitted his report dated 12.2.1992 and held the charges against the petitioner as proved. The disciplinary authority by taking into consideration the report of the Inquiry Officer, after perusal of the record and the documents placed on the proceeding file came to the conclusion that the findings are correctly drawn by the Inquiry Officer and he agreed with the findings and held that the charges are proved. The disciplinary authority was of the opinion that the absence of the petitioner from duty from 12.2.1991 till the date of issuance of the order is a serious dereliction of duty and therefore, he imposed the punishment of removal from service.

7. Against the said order an appeal was preferred

and the appellate authority, after recording that the said appeal is time barred as the impugned order of removal dated 5.3.1992 was served on the petitioner on 9.3.1992, considered the appeal on merits as the petitioner requested that due to poor condition of the health of the petitioner, the petitioner could not make the appeal in time and that the same shall be entertained by the appellate authority. It is also noted by the appellate authority that the petitioner has requested for voluntary retirement from service from 17.10.1991, in view of his poor health and having contagious disease. It is also noted by the appellate authority that the petitioner has put in 26 years of service. The appellate authority while considering the appeal has not upheld any of the grounds on which the impugned order was challenged. Not only that the appellate authority turned down the request of the petitioner for voluntary retirement with effect from 17.10.1991 on the ground that the same could not be considered in view of the unauthorised absence of the petitioner and as the departmental action was contemplated against the petitioner, the appellate authority has also taken into consideration that the petitioner has been punished 26 times in his 16 year service span. It is stated that the petitioner was fined 9 times, censured 8 times, withholding of increment had taken place on 7 occasions, withholding of pass and PTO had taken place on 2 occasions and reduction in pay had also taken place on 2 occasions. Taking into consideration the evidence on record, the appellate authority did not find any substance in the grounds which were put forth to absolve him of the charges levelled against him. The appellate authority has recorded that,

".. .. He was so brazen that he did not care for the two notices dated 20.6.1991 and 2.8.1991 sent by DSC/ BRC which were acknowledged by him in time and did not report for duty but continued to remain absent."

8. Looking to the facts and circumstances of the case the petitioner is not able to make out any case for interference by this Court under Article 226 of the Constitution of India inasmuch as the quantum of punishment is the discretion of the disciplinary authority. It is possible that in a given set of circumstances, this Court might have imposed some lighter punishment than the one which is imposed by the disciplinary authority, but that itself does not warrant any interference at the hands of this Court.

9. The petition fails and stands dismissed. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)

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